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LEGACIES FOR ENDOWMENT

THOSE making or revising their Wills may like to consider benefiting some selected aspect of Church Army Social or Evangelistic work by the endowment of a particular activity—thus ensuring effective continuance down the years.

Gifts—by legacy or otherwise—will be valued for investment which would produce an income in support of a specific object, of which the following are suggestions:—

1. **Training of future Church Army Officers and Sisters.**
2. **Support of Church Army Officers and Sisters in poorest parishes.**
3. **Distressed Gentlewomen's Work.**
4. **Clergy Rest Houses.**

Preliminary enquiries will be gladly answered by the

Financial Organising Secretary

THE CHURCH ARMY

55 Bryanston Street, London, W.1

A Recommendation to Mercy

In recommending a bequest or donation to the RSPCA you may confidently assure your client that every penny given will be put to work in a noble cause. Please write for the free booklet "Kindness or Cruelty" to the Secretary, RSPCA, 105 Jermyn Street, London, S.W.1.

REMEMBER THE

RSPCA

MISS AGNES WESTON'S

ROYAL SAILORS RESTS

PORTSMOUTH (1881) DEVONPORT (1876) GOSPORT (1942)

Trustee in Charge:
Mrs. Bernard Currey

All buildings were destroyed by enemy action, after which the Rests carried on in temporary premises. At Devonport permanent quarters in a building purchased and converted at a cost of £50,000 have just been taken up whilst at Portsmouth plans are well advanced to build a new Rest when permission can be obtained.

Funds are urgently needed to meet heavy reconstruction commitments and to enable the Trustees to continue and develop Miss Weston's work for the Spiritual, Moral and Physical Welfare of the ROYAL NAVY and other Services.

Gifts may be earmarked for either General or Reconstructional purposes.

Legacies are a most welcome help

Not subject to Nationalisation.

Contributions will be gratefully acknowledged. They should be sent to the Treasurer, Royal Sailors Rests, Buckingham Street, Portsmouth. Cheques, etc., should be crossed National Provincial Bank Ltd., Portsmouth.

Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

None of the vacancies in these columns relates to men and women coming within the provisions of the Control of Engagement Order, 1947, S.R. & O., No. 2021, or the vacancy is for employment excepted from the provisions of the Order.

COUNTY OF CHESTER

Boroughs of Congleton and Macclesfield. Petty Sessional Divisions of Congleton and Prestbury

Female Probation Officer

APPLICATIONS are invited for the appointment of a whole-time female probation officer to serve the above areas.

Applicants must be not less than 23 and should not have attained 40 years of age, except in the case of whole-time serving officers or persons who have satisfactorily completed a course of training approved by the Secretary of State.

The appointment will be subject to the Probation Rules, 1949, and the Probation Officers' (Superannuation) Order, 1948, and the salary will be in accordance with the prescribed scale.

Applications, stating age, qualifications and experience, with copies of three recent testimonials, must reach the undersigned not later than January 31, 1950.

JOHN TATLOW,
Clerk to the Macclesfield Borough Justices.

Oak House,
Brunswick Street,
Macclesfield.

HERTFORDSHIRE LOCAL VALUATION PANEL

APPLICATIONS are invited for the whole-time appointment of Assistant Clerk of the Panel, salary scale £450—£495 per annum. The number of hereditaments in the County is at present 177,994. It is likely that in the course of a year or so this number will be 200,000 when the salary for this appointment will be on the scale £480—£525.

Candidates should have a knowledge of the law of rating and some experience of court procedure and administration.

The National Scheme of Conditions of Service adopted by the National Joint Council for Local Authorities' Administrative, Professional, Technical and Clerical Services, will apply to the above appointment with the appropriate conditions and payments for sickness, subsistence, etc. Travelling allowances in accordance with Civil Service scale. The Local Government Superannuation Act, 1937, will also apply and the successful candidate will be required to pass a medical examination. It is anticipated that the office of the Panel will, as a temporary measure, be situated in Hertford for a short period and thereafter in St. Albans. Applications, stating age, details of experience, etc., and giving the names of three referees, should reach the undersigned not later than seven days after the appearance of this advertisement. Persons who have already made application for this appointment need not submit further applications.

NEVILLE MOON,
Clerk of the Hertfordshire County Council.

County Hall,
Hertford,
Herts.
December 30, 1949.

WEST SUSSEX

Chichester Division

APPLICATIONS are invited for the appointment of assistant in the office of the Clerk to the Chichester City and County Justices. Applicants should be experienced in the general duties of a Justices' Clerk's Office, capable of taking Courts in the absence of the Clerk, able to keep magisterial accounts, court registers and other records, and take depositions. Shorthand and typewriting essential.

Salary in accordance with the Clerical Division of the National Scale (£395—£440). Superannuated post. Office in modern Court House.

Applications, stating age, particulars of experience and copies of two testimonials (or names and addresses of referees) to be sent to the Clerk to the Justices, Court House, Southgate, Chichester, by January 21, 1950.

WORCESTERSHIRE

Appointment of Assistant Solicitor

APPLICATIONS are invited for the position of second Assistant Solicitor in the office of the Clerk of the Council at a salary within A.P.T. Grades VII (£685—£760) and IX (£750—£900) according to age, experience and qualifications.

The appointment will be subject to the National Scheme of Conditions of Service and the Local Government Superannuation Act, 1937.

Applicants must be competent conveyancers and advocates.

Applications, to be on a form which may be obtained from me, should reach me not later than January 18, 1950.

W. R. SCURFIELD,
Clerk of the County Council.

Shirehall,
Worcester (E 161).

CITY AND COUNTY BOROUGH OF WAKEFIELD

Appointment of Assistant Solicitor

APPLICATIONS are invited for the above appointment, at a salary in accordance with Grade A.P.T. VII (£635 × £25—£710 per annum). The commencing point in the grade will be dependent upon the experience of the person appointed.

If required, a house will be made available for the successful candidate.

For further particulars, apply to the undersigned. Closing date for applications, Thursday, January 12, 1950.

W. S. DES FORGES,
Town Clerk.

Town Hall,
Wakefield.
December 28, 1949.

DURHAM RURAL DISTRICT COUNCIL

Appointment of Deputy Clerk of the Council

APPLICATIONS are invited for the appointment of Deputy Clerk of the Council at a salary in accordance with Grade IV of the A.P.T. Division of the National Scales of Salaries, namely, £480 rising by annual increments of £15 to £525.

The appointment which is subject to the National Scheme of Conditions of Service, the provisions of the Local Government Superannuation Act, 1937, and to the successful candidate passing a medical examination will be determinable by one month's notice on either side.

A council house will be made available if required.

Applications, on forms to be obtained from the undersigned, should be received not later than Saturday, January 21, 1950.

Canvassing either directly or indirectly, will disqualify and applicants must disclose whether to their knowledge they are related to any member or senior officer of the Council.

ROSAMOND TAYLOR,
Clerk of the Council.

Council Offices,
Byland Lodge,
Hawthorn Terrace,
Durham.
December 29, 1949.

LINCOLNSHIRE No. 1 VALUATION PANEL

APPLICATIONS are invited for the whole-time appointment of Assistant Clerk to the above Panel the area of which comprises the Grimsby County Borough, Cleethorpes Borough, Grimsby R. D., Louth Borough, Mablethorpe and Sutton U.D., Loth R.D., Barton R.D., Brigg U.D., Market Rasen U.D., Caistor R.D., Glanford Brigg R.D., Scunthorpe Borough, Isle of Axholme R.D.

The salary will be £420—£465 per annum.

Experience of the work of Assessment Committees will be an advantage.

The Local Government Superannuation Act, 1937, and the National Scheme of Conditions of Service adopted by the National Joint Council for Local Authorities' Administrative, Professional, Technical and Clerical Services, will apply to the above appointment.

Applications stating age and experience, which should include one testimonial, and give the names of two persons to whom reference may be made, should reach the undersigned not later than 14 days after the appearance of this advertisement.

W. A. HOULTBY,
Clerk to the Panel.

St. Mary's Chambers,
Grimsby.

SITUATIONS VACANT

NORTH WILTS—Conveyancing and General Clerk required, also Common Law Clerk. Good salary but according to age and experience. Accommodation may be available. Apply with copy of testimonials and photograph (returnable). Box A.7, office of this paper.

PROBATE CLERK required by busy West Midland firm. Salary by arrangement. Accommodation might be found. Send photograph and copy of testimonials to Box B.8, office of this paper.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837]

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NOTES of the WEEK

The Work of an Eighteenth-century Magistrate

The current issue of *The Countryman* contains an interesting feature under the heading Diary of an Eighteenth-century J.P. It records many of the proceedings of one William Emmett, who was appointed to the Commission of the Peace in 1728, and is thought to have died in 1737. Various entries relate to the grant of warrants of arrest, orders of removal of paupers, search warrants, appointments of constables and the examination of accused persons, and are sufficient to show how different was the work of an eighteenth-century magistrate from that of his successor in the twentieth-century.

Thus, we find the diarist granting a warrant against a schoolmaster for not paying a woman her wages. A "special warrant" is granted against a householder "for contempt and refusing to execute my warrant, throwing it upon the ground and saying if I write another warrant he would serve it the same." Another warrant is "for contempt and abusing me in the execution of my office." A woman is fined in respect of five separate oaths, "and did pay accordingly." The same woman was convicted of being drunk "upon my view." "A notorious night-walker and of evil fame," who is also described as an "idle dissolute and disorderly fellow that will not go out to service, but leads a dishonest course of life and conversation, and is a most dangerous and incorrigible rogue" is sent to the house of correction. Another entry reads: "I granted a warrant to the constables and householders to bring all such persons before me that shall be found gameing, sports and pastimes, drinking, tipling or any other means prophaneing the Lord's Day."

An Examining Magistrate

The contrast between the procedure of examining justices of the eighteenth and the twentieth-centuries is illustrated by several entries in the diary. A woman upon examination told the magistrate that she and another saw some sheep and agreed to catch one and kill it; that they proceeded to do this, skin the animal and agreed to divide it. "And further this examinant saith not." Both were eventually sent to the house of correction, for six weeks later the diary concludes the story: "Granted a liberate to discharge Mary Davis and Anne Bailey out of the house of correction, ordering the said Mary Davis to be whipped she being a notorious and incorrigible offender, and that Anne Bailey should not receive corporal punishment on account of her suckling her child." Notice had been given publicly that the women were in custody so that the owner of the sheep might come forward, see the examinations of the women, and prosecute. Whether he did so is not clear, as apparently the women were sent to the house of correction before any prosecutor was discovered.

Again, a labourer on examination tells the justice how he went over a gate and entered a poultry run at a place where he used to work as an hostler, and stole fowls. Upon which and further examination, he was sent to the house of correction.

The interesting point is that the diary shows that the examination of accused persons actually took place, and thus reminds us that the practice of taking depositions of witnesses in the presence of the accused, and of abstaining from questioning the defendant, is modern.

Legislation in a Hurry

For some time past Parliament has been busy turning out new enactments at a rate in excess of the capacity of the administration to provide the necessary machinery for their implementation. The latest example is the Married Women (Maintenance) Act, 1949. We speak with some hesitation on the matter because we have not yet seen a copy of it, although it is now part of the law of the land. So far as we are aware no clerk to justices or magistrate has seen a copy either, although they have to have regard to its provisions in their day to day work. How are they to do this? They have at present to refer to a copy of the Bill, together with a sheet headed "Lords Amendments to the Married Women (Maintenance) Bill" and they have further to take into account that a Home Office circular informs them that one clause from this list of amendments was omitted during the course of the Bill's passage through Parliament. We are not aware that there was any desperate urgency which required that this most unsatisfactory way of informing courts as to the law should perforce be adopted, and we hope that it is not to become the rule that new statutes of daily importance to summary courts shall be dealt with in this way. Incidentally, it may be asked whether a two and a half page circular is really necessary to explain a perfectly simple and straightforward new Act of some seven sections?

Commission of Further Offence During Probation

Attention was drawn at p. 657 of last year's volume to the need to prove formally the conviction and order, and the consent of the first court when it is proposed, in accordance with s. 8 (7) of the Criminal Justice Act, 1948, to deal with a probationer who is convicted before a second court of a further offence. It is no less necessary that the court which made the probation order should keep a record of this consent having been given, and it has been suggested that a convenient way of recording this is for the court to enter in the court register against the entry in respect of which the probation order was made, some such wording as follows:—"1st Jan., 1950, consent granted to X Court for the offence to be dealt with under s. 8 (7) C.J. Act, 1948." This has the additional advantage that the consent of the court will appear on the extract which

has to be sent to the second court so that the jurisdiction of the second court will be apparent on the face of the extract. For the sake of completeness it may be added that where the supervising court is not the court which originally made the probation order this court will not of course be in a position to send an extract from the court register, and in this case the supervising court will no doubt send a copy of the probation order, which will have been forwarded to it by the court making the probation order in accordance with s. 3 (4). This probation order can be endorsed with the form of consent suggested above.

Although the court which deals with a defendant for the offence for which the order was made is not formally obliged to notify the consenting court of its decision, no doubt, as a matter of courtesy, this will normally be done.

Proof of Matrimonial Offence

It was laid down by the Court of Appeal in *Ginesi* v. *Ginesi* [1948] 1 All E.R. 373, that where adultery is alleged, it must be proved beyond all reasonable doubt, as if adultery were a criminal offence. In that case, reference was made to the case of *Churchman* v. *Churchman* [1945] 2 All E.R. 910, and to observations of Lord Merriman, P., as to the need of very strict proof in matrimonial offences in general. Lord Merriman was, in fact, dealing with an allegation of adultery in *Churchman* v. *Churchman*, and it was not therefore necessary in that case to decide the standard of proof required in other matrimonial offences. Neither was it necessary for the Court of Appeal in *Ginesi* v. *Ginesi* to go into the larger question, which accordingly was left open.

The matter has now been carried further by the Court of Appeal in *Davis* v. *Davis* [1949] W.N. 468.

In that case Barnard, J., had dismissed a husband's petition based on cruelty holding that strict proof, as for a criminal offence, was essential. The Court of Appeal allowed the appeal. In the course of his judgment Bucknill, L.J., said it was not necessary to settle the point as to proof such as to justify conviction, but thought it sufficient to say that in a case of cruelty there must be strict proof so as to leave no reasonable doubt, though he added that perhaps Barnard, J., had set up too high a standard of proof.

Denning, L.J., went further. He pointed out the considerable difference between civil and criminal cases in relation to the degree of proof required, and said that a divorce suit is a civil proceeding. The stringency of the rules in criminal cases were not, he considered, applicable to divorce suits based on cruelty or desertion. His Lordship found nothing in *Ginesi* v. *Ginesi* (*supra*) to justify the Divorce Court in adopting to standard of proof as for criminal cases, apart from charges of adultery. He went on: "There is, it seems to me, a danger in asserting what the statute does not assert, that the charge must be proved beyond reasonable doubt, because of the temptation it affords to give effect to shadowy or fanciful doubts. That standard is a proper safeguard to persons accused in criminal cases; but, if applied in divorce cases, it may mean unjustly depriving an injured party of a remedy which he ought to have." The learned Lord Justice also dealt with the question of corroboration and the difficulty, in many instances, of producing such evidence in cases of cruelty, and said that in this particular case he thought the judge might have been convinced by the husband's evidence and the incredible nature of the wife's explanation.

Paraffin and Petrol

It is difficult for lawyers to be aware of all the prohibitions which the present age of freedom has produced, and it is not surprising, therefore, that a twenty-year-old motor cyclist should have told Mr. Bennett at the Marlborough Street court that he was unaware of the prohibition against using paraffin to supply motive power to his motor cycle. According to a newspaper report of the case, the officer in the case was asked why he thought the regulation had been made and his reply was "Kerosene is easily obtainable." When Mr. Bennett commented that that was a good reason for using it the officer stated that he believed petrol carried a higher rate of tax than kerosene.

We assume that there must be good reason for the prohibition and it is important, therefore, that the provisions should be well known. The relevant statutory instrument is the Motor Fuel (Control) Order, 1948. Article 4 (1) makes it an offence to possess, except under licence, any kerosene mixed with motor spirit, and art. 5 (5) prohibits, except under licence, the case of kerosene, alone or in a mixture, for supplying motive power to any motor vehicle chargeable with duty under s. 13 of the Finance Act, 1920, except those specified in para. 4 (*a*), (*b*), (*bb*), (*c*) or (*d*) of sch. 2 to that Act. The prohibition covers, in effect, all normal motor vehicles, the exceptions being certain classes of agricultural vehicles, road construction vehicles, and mowing machines.

Article 5 (6) of the order prohibits equally the use of any benzole (other than motor benzole), or any special boiling point spirits, white spirit, or rubber solvent for supplying motive power to an internal combustion engine and the causing or allowing of such use.

A New Suggestion

At Penketh, near Warrington, a novel "Quiz" has been originated which takes place on the first Monday of each month. Parish councillors attend to answer questions. "I believe," said their clerk, "we are the first parish council ever to do this." With members of the larger authorities, this idea has long been tried, and been effective, and it is to be hoped that Penketh will find it equally effective.

One is inclined to believe that something could be done with the problem of crime if magistrates introduced a similar form of instruction. Parents, children, and all who are interested, would be able to discuss the many aspects of crime with members of the bench, and, who knows, these informal meetings may result in saving many from appearance before the courts as real defendants. Prevention has ever been better than cure and there never was a time when a greater need existed for experimenting to discover how to turn the would be offender aside before it is too late.

Another aspect is possible. The majority of men and women are lawabiding; they loathe crime and the courts. On account of their views they seldom, if ever, come into contact with the criminal minority, and the latter are thereby denied the better influence they could exercise. The opportunity would be afforded the good citizen to get to know more of the sordid side of life.

His charity of purpose may be forthcoming to assist the weaker members of the community who succumb to crime.

Tobacco and Excise

A quantity of home-grown tobacco estimated to be sufficient to make 11,000 cigarettes, is stored in leaf form at Bradford (Yorks). It is the property of the City Council and was grown on their 1,900 acre farm. It cannot be sold, because of Excise regulations, smoked, or given away; nor can the tobacco be smoked by the Council's staff because it belongs to the ratepayers.

Seeds were bought last spring and recently the fully grown leaves, some eighteen inches long, were harvested and dried; the crop weighs eighty pounds. It seems that no one is available to cure the tobacco so that it can be used for smoking.

One councillor, who originally supported the scheme of tobacco growing, said: "We have proved that tobacco can be grown very well using a particular fertiliser. Even if we have to put in on a compost heap it will have been worth while. We can't say yet what will happen to it."

Section 5 (2) of the Finance (No. 2) Act, 1939, reads: "In lieu of the duties of excise charged on tobacco by s. 1 of the Finance Act, 1939, there shall be charged on tobacco grown in the United Kingdom of the description set out in col. 1 of part II of sch. 4 to this Act, duties of excise, at the rates respectively specified in col. 2 of that part of that Schedule."

The growing of tobacco in Great Britain is governed by regulations made under s. 3 of the Finance Act, 1908, and s. 83 of the Finance Act (1909-1910) Act, 1910. An excise licence must be obtained to grow and the premises must be entered (registered); registers must be kept and tax paid. The Excise authorities can refuse permission to grow tobacco in certain localities.

The position at present with regard to tobacco grown by the individual for his own consumption only, is that the Excise authorities take no cognizance of the matter. No statutory instrument has been issued permitting the practice but it is tolerated where the growing is on a small scale for one's personal use.

This dilemma of the Corporation tends to give realism to the comment of a humorist, speaking of committee members, "Individually they can do nothing, and collectively they can resolve that nothing can be done."

THE MARRIED WOMEN (MAINTENANCE) ACT, 1949

In view of the fact that a magistrate's order for the maintenance of a wife could be as much as £2 a week some seventy years ago, and that since then the value of money has steadily decreased, there has been justifiable agitation for a long time past for legislation making a substantial increase in the maximum weekly amount. Some benefit to wives was given in 1920, when it became possible to add a separate amount for each child of the marriage under sixteen, but it has been true, for many years past, that even this fell far short of the amount some orders should provide. Therefore, the new Act would have been welcomed even if it had contained no more than the increased maximum for a wife, £5, and for a child, 30s.

A consequential alteration is made in the application of s. 25 (1) of the Finance Act, 1944, which relates to payments in full, without deduction of income tax, under small "maintenance orders" up to £2 a week for a wife and £1 a week for a child, these being raised to £5 and 30s. respectively.

Now that 30s. a week may be ordered in respect of a child, under the Married Women (Maintenance) Acts, 1895 to 1920, there will be no need for simultaneous applications under those Acts and the Guardianship of Infants Acts, 1886 and 1925, or for the substitution of an order under the latter Acts for one under the former, as allowed by *In Re Kinseth; Kinseth* v. *Kinseth* [1947] 1 All E.R. 201; 111 J.P. 136 and *Flood* v. *Flood* [1948] 2 All E.R. 712; 112 J.P. 416. Instead, we may find some women who have an order up to 20s. a week under the Guardianship of Infants Acts, applying to have it revoked, if they have already obtained an order under each set of Acts, and asking to have the maintenance order varied by the insertion of a provision as to custody and increased maintenance for the child. However, if the wife's order did not originally contain a provision relating to the children, it seems that the decision in *Harvey* v. *Harvey* (1923) 128 L.T. 698 bars her application. If her own order originally contained such a provision but subsequently she obtained an order under the Guardianship of Infants Acts instead, it can reasonably be argued that if she gets the order under the Guardianship of Infants Acts revoked she will be free to apply, under s. 30 (3) of the Criminal Justice Administration Act, 1914, for a revival of the provisions in the original order relating to the child. It is, perhaps, a pity that opportunity was not taken to alter the law so as to override the case of *Harvey* v. *Harvey*, it has certainly proved inconvenient.

Generally, existing maintenance orders can be varied so as to give effect to the increased maxima, but this does not apply to orders made under s. 5 of the Licensing Act, 1902.

Orders may be varied, under the Act of 1920, so as to provide maintenance in respect of a child of the marriage up to eighteen years or exceptionally by extension up to twenty-one, where the child is to undergo or is undergoing education or training beyond the age of sixteen.

The duties of collecting officers will be heavily increased by the requirement, in s. 4, that notice must be given to the woman when four weeks' arrears have accrued, unless this is considered inexpedient owing to special circumstances. At busy courts, this is likely to necessitate increase of staff. The collecting officer will also have to take proceedings for arrears, in his own name, upon the request of the woman, unless it appears to him to be unreasonable. The married woman may still proceed in her own name if she so prefers.

Access to children by the parent to whom custody is not given could already be dealt with in an order under the Guardianship of Infants Acts, but not under the Married Women (Maintenance) Acts. This omission is now remedied by s. 5 of the new statute, which confers the necessary powers. Questions may arise as to the enforcement of such orders where the person having custody refuses access required by the order. So far as custody orders are concerned, s. 34 of the Summary Jurisdiction Act, 1879, is applied by s. 7 (5) of the Guardianship of Infants Act, 1925, and s. 5 of the Summary Jurisdiction (Separation and Maintenance) Act, 1925. It would have been helpful to the courts if the new Act had explicitly provided that refusal of access could be dealt with in the same way.

A most valuable amendment of the law is contained in s. 6, which enables an applicant to apply to a court having jurisdiction in the place where the married woman or her husband ordinarily resides. There have been cases where the lack of such jurisdiction has caused serious hardship, and even the denial of a summary remedy, as for example where the allegation is that adultery has been committed abroad. The new provision also meets the case where there are complaints on two grounds which have arisen within different jurisdictions.

The new Act and the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, can now be cited together as the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949.

THE CONTRACEPTIVE BYELAW

Our article at 113 J.P.N. 659, which dealt primarily with sex instruction in schools, and went on to speak of the sale of contraceptives by means of slot machines, was in the printer's hands before the issue of the Home Office circular dated October 22, 1949, intimating that the Home Secretary had prepared a model byelaw on the subject. The reasons which prompted the Home Secretary to accede, by the byelaw method, to suggestions for prohibition made in various influential quarters were explained by him in the House of Commons. Shortly stated, his view is that the sale of contraceptives by means of slot machines in streets and places analogous to streets is an evil: that it is an evil which occurs only in some places; and therefore that it is an evil properly to be curbed by byelaws for good rule and government. With respect, and notwithstanding the approval of the Home Secretary's action in issuing a model byelaw which was manifested in all quarters of the House of Commons, we remain of the opinion that, if these sales are an evil, the evil is one with which Parliament itself ought to deal upon broad national grounds, instead of leaving the burden of doing so to local authorities. We dare say it can be argued that the evil is greater in a residential suburb than in a dockside area, but we do not think it should be left to the local authority (of one area or the other) to decide this highly controversial question and, if there is anything in the theory of a localized evil, then the area of a county is probably too big and too differentiated to be proper for homogeneous treatment. We have said "if these sales be an evil," and we think (notwithstanding that the Home Secretary has reached a decision which, according to the newspapers, many local authorities are following with alacrity) it is worth while once more to point out certain fundamentals. The theory is that the making available in slot machines in public places, of contraceptives which are during business hours also obtainable from shops, is putting temptation in the way of persons, especially young persons, who will therefore be guilty of misconduct, which, if the contraceptives were not there, would not enter their heads or would be rejected by reason of fear of consequences. We do not say there is nothing in this argument, but we do not think there is much in it at the present day. As against the likelihood (or even certainty) that absence of facilities for obtaining contraceptives at a given time and place will sometimes prevent the commission of misconduct, there is the certainty, borne out by universal experience long before contraceptives were invented, that a great deal of misconduct will take place, given circumstances which make it possible. This misconduct will be followed in its turn by a crop of illegitimate children and venereal disease, and this certainty has to be weighed against the possibility (or certainty, in so far as it is certain) that absence of this particular facility will deter some persons from misconduct. It is largely a matter of numbers, on each side of the argument. This balancing of argument is, we repeat, a matter much more suitable for Parliament than for local authorities. Seeing, however, that local authorities are being invited by the Home Secretary to make a byelaw on the subject, we are at any rate pleased to see that the model byelaw has been confined in narrow limits. The prohibition in the model where it is adopted will extend no further than the offering of contraceptives for sale by means of an automatic machine, so placed that it can be used by persons who are in a street, and street is defined to include a way or place over which the public have a right of passage and also the forecourt of or entrance to a building, provided that such forecourt or entrance is exposed to the view of persons passing along the street, and that the public have unrestricted access to such forecourt or entrance. There is here a whole series of limits, which can be taken *seriatim* in relation to proposals which have come to our notice as having been before different local authorities. The limitation, for example, to sale by means of an automatic machine leaves untouched sales over the counter (no doubt the most general method by which these articles are sold) and also sales by hawkers, either from door to door or in the street. So far as we know there has been little of such last-mentioned selling; an attempt was made to prohibit it, as well as sales by automatic machines, in Lord Dawson's Bill which passed the House of Lords, but not the Commons, some fifteen years ago. The fact that the present byelaw does not touch these rival methods of sale may indeed be ground, if the byelaw is ever contested in the Divisional Court, for arguing that it is unreasonable and bad, for discrimination against one mode of trading. Next, the prohibition does not extend to sales by means of an automatic machine placed in a chemist's shop or inside any other premises. Such machines were said in the debates in Parliament before the war to have existed, even then, in such places as the lavatories of hotels, and garages, and the suggestion has been made by some local authorities within the past few weeks that machines may be placed, if they have not yet been placed, in cinemas and dance halls. According to the newspapers, the county council of Kent are proposing to alter the model byelaw so as to forbid the sale of contraceptives from slot machines in any place in the county. We should suppose that a byelaw purporting to do this would, beyond doubt, be *ultra vires*. If limited to cinemas and dance halls where (we are quoting from a newspaper statement of what was said at the county council's meeting) "the emotions are easily aroused," we hesitate to say that it would be *ultra vires*, but we should regard it as unreasonable—and indeed unnecessary because, if the proprietors of cinemas and dance halls were minded to give permission for the placing of these machines upon their premises, the appropriate licensing authorities could in our opinion deal with the matter in due course. (We are, however, sceptical about the likelihood of the placing of machines in such places.) Again the model byelaw does not prohibit the placing of these machines in multiple stores, which one local authority has desired to prohibit, or in such places as railway stations, coach stations, and public sanitary conveniences—this however is tied up with the limitation to streets as specially defined, to which we shall come later. Nor does the model byelaw prohibit the sale of contraceptives, by way of machines or otherwise, in markets, a prohibition which some market authorities have desired in the past, but one which in our opinion would certainly be invalid, as being contrary to the nature and purpose of a market. So long as contraceptives are allowed by Parliament to be an article of commerce (and this, of course, opens a much bigger and even more controversial question) they must, like any other article of lawful commerce, be capable of being put on sale in a market for general commodities. We have already quoted the definition of street, on which hangs the operation of the byelaw as issued from the Home Office. In so far as it includes a way or place over which the public have a right of passage it is on normal lines, the emphasis being on the "right." This excludes a number of places which are in practice open to the public, sometimes during the hours of daylight and sometimes at all times. Some of these places are almost indistinguishable from those over which there is a right of passage, and in case of dispute it will be for the prosecution to prove the right. This part of the definition certainly excludes shopping arcades and places of that sort, just as it excludes the Inns of Court. The definition of "street" is, on the other hand, extended so as to bring within the byelaw the forecourt of or entrance to a building.

Their bringing in is subject to a proviso that they are exposed to the view of persons passing along the street, not necessarily that every portion of the forecourt or entrance can be seen from the street, and that the public have unrestricted access. The obvious intention of this part of the byelaw is to bring within its scope what is probably the most ordinary position, for putting an automatic machine for any purpose outside a shop when the shop is shut: that is to say, the wedge shaped piece of ground set back from the pavement and leading to the shop door, or the unenclosed strip of paved land which is left by the landowner in front of a shop window, and not actually dedicated to use as a highway. There are various kinds of ground analogous, more or less, to the forecourts and entrances of buildings, which are not brought within the model byelaw, such, for example, as car parks, bombed sites left vacant and open to promiscuous passage, and sanitary conveniences opening from streets. In so far as these last are the property of local authorities, it will be the local authority which decides whether to allow automatic machines to be placed there, for this or any other purpose: there are already automatic machines in some public sanitary conveniences, for the sale of some commodities, and if the local authority which owns the place is minded to allow the sale of contraceptives therein that is its affair, and is not affected by the model byelaw.

Finally, there is one point which the model byelaw does not meet, namely, that it affects only the person who offers the article for sale by means of a machine. There may be cases where a shopkeeper or property owner makes his premises available, for the placing of machines where they can be used by persons who are in a street; as the model byelaw stands it is only the person offering the article who commits an offence, and not the person who receives rent for the placing of the machine. We have, however, no doubt that this last named person can be prosecuted for aiding and abetting the commission of a summary offence, under s. 5 of the Summary Jurisdiction Act, 1948, if it can be proved that he knew the purpose for which the machine was to be used. This last point is important. As we understand the matter, a machine capable of selling contraceptives is in itself neutral. It can sell any article of a given weight, on being paid with a coin of a given weight. The property owner who lets a piece of pavement or a piece of wall for the placing of an automatic machine may therefore be able to defend himself successfully, upon the ground that he did not know, until his attention was drawn to the matter subsequently, that the machine would be used or was being used for a forbidden purpose. To sum up: we regret that local authorities have been drawn into this field, through the Home Secretary's offering a model byelaw as a means of placating persons who were clamorous that "something should be done." We are not satisfied that this clamour was in the national interest: upon this, only one side of the argument has been stated in the Press or in Parliament. We consider Parliament, and not the council chambers of local government, to be the proper *forum* for the argument. But, seeing that the Home Secretary has yielded, and has invited local authorities to assume the burden, we advise them to stand upon the model byelaw, going thus far if they will, but no further, down a most precarious slope.

TRUST IN AN OPEN SPACE

The town clerk of a borough whose council control a good deal of corporate property has consulted us, upon a proposal to let a strip in a public open space to the Home Guard Rifle Club, for use as a shooting range. The lease would be for five years. We assume that no danger is anticipated; this, at any rate, is not the point put to us. The point is whether the land is impressed with a trust, so that s. 179 of the Local Government Act, 1933, precludes its being let for the purpose proposed. The town clerk reminds us that, in *Hall* v. *Beckenham Corporation* (1949) 113 J.P. 179, the ground there in question was spoken of as being on trust for the purpose of a public pleasure ground, and he was apprehensive lest s. 179 of the Act of 1933 barred the proposal for a shooting range. In truth, land held by a local authority for public purposes has often been spoken of as being held on trust, and the expression, though not always precisely apt, is often convenient. Where local authorities have been concerned to use the phrase in court, it has usually been for their protection against some burden, such as rates, or, in the Beckenham case, against some suggested liability to other persons. Now in *Hall* v. *Beckenham Corporation* the ground had been provided under s. 164 of the Public Health Act, 1875, and expressly dedicated to public use as a pleasure ground. In such a ground any person may do anything he pleases which is not unlawful, and the public at large cannot be excluded except to the limited extent enacted by s. 44 of the Public Health Acts Amendment Act, 1890. That this was the *ratio decidendi* is clear from the middle of p. 182 of our report. Whether such a ground is subject to a trust in the sense of s. 179 of the Local Government Act, 1933, is a question upon which we had no need to express an opinion for the purpose of the case on which we were advising, because the ground before us was not provided under the Act of 1875. The strip of land proposed to be let to the rifle club formed part of an open space, made available generally by the council to the public as a place of recreation, an open space which had been acquired by the corporation under several titles. These went back to the early nineteenth century; bits of land had been added as opportunity offered, until in 1898 the ground was made available for general public use. Part of it was subject to a charity scheme under which the council must apply the rent, if any, or other income coming to them from the property, for specified purposes, but the scheme said nothing about the mode of using the land itself. Nor did any of the conveyances by which they had acquired later portions. Some was acquired by prescription. The power under which they conceived themselves to be managing the land and paying for its upkeep was not stated in the papers sent to us. Looking to its mixed origins, we should say that s. 12 of the Open Spaces Act, 1906, was the most reliable power for them to regard as governing it. Upon these facts, and particularly in absence of any expressed obligation in any of the documents to use the land in any particular way, and the absence of any express dedication or appropriation as a pleasure ground or open space, we felt justified in advising that there was power to let a strip to the club for five years for the purpose desired. The view we take of the town council's power to let off part of the land, notwithstanding its present use by the public at large, is supported by *A.-G.* v. *Manchester* [1931] 1 Ch. 254; 144 L.T. 112. In that case the land had been acquired under statute, and money had been spent both by the city council and by other persons for the purpose of adapting it and maintaining it as a public open space; it had been used as a public open space for many years. Nevertheless, Maugham, J., held that this use was (in the original sense of the word) "precarious" (p. 115 of the L.T. report) and that the council could close the ground to the public at any time. The case of our recent correspondent seems *a fortiori*.

WATER ECONOMY

In discharging their principal task, that of finding measures which can be taken without hardship to consumers to prevent demand for water from outrunning supply, the informal working party set up by the Ministry of Health a year ago have produced an interim report which sets out cogent facts, reviews current environmental circumstances, and makes eminently practical suggestions.

Water supplied by twenty-one geographically representative undertakings in England and Wales outside the area of the Metropolitan Water Board rose by thirty *per cent.*, from 341 m.g.d. to 444 m.g.d., between 1938 and 1948; if this rate of increase continued, water undertakings would be faced by 1970 with a demand for twice the amount of water consumed in 1938. In the Board's area of direct supply, the increase during the ten years was from 310 m.g.d. to 334 m.g.d., equal to eight *per cent.* For the twenty-two undertakings, the average daily consumption per head of population, including both trade and domestic, was 32·3 gallons in 1938, being the mean of a range from 20·6 gallons in the case of Southend Water Company to 43·8 gallons for the Metropolitan Water Board. In 1948, the average for the twenty-two undertakings was 40 g.p.h.d., covering a range from the 27·3 g.p.h.d. in the case of Southend Water Company to 68 g.p.h.d. in that of Newport Corporation. The 1948 figure for the Metropolitan Water Board was 51·8 g.p.h.d. Looking at statistics for undertakings throughout the country, the working party comment "that, the average daily consumption is increasing at a rate which, if allowed to continue unchecked, will beyond doubt confront the water industry with the gravest crisis it has yet had to face."

Several directions are mentioned in the report in which the use of water on an extended scale has arisen or may be expected. Industry working at full pressure since the war has required increasing quantities of water for its manifold processes and ancillary services. Extension of piped supplies in rural areas, in connexion with a programme of considerable agricultural expansion, is beginning to make its influence felt. Overtaking of war-time housing arrears means that more families previously sharing accommodation are being provided with separate dwellings with modern equipment, including a domestic hot water system in which water may have to be drawn for a time before it reaches the tap at the required temperature. Greater awareness of the importance of hygiene in all its aspects in living and working conditions is making additional demands on water resources.

A prominent place has always been occupied in the minds of water engineers by the problem of waste, which is reckoned to account for a loss of from three to ten gallons daily per head of population. Apart from leakage from distribution systems, various and striking causes of which are exemplified in the report, consumers are held responsible for a substantial proportion of waste, for, as is rightly said, they are inclined to be careless when using any commodity, such as water, which is easily come by. Replacement of existing statutory provisions by the modern code in the Water Act, 1945, sch. 3, including part XIII (prevention of waste), and powers to make byelaws, would provide a better check on consumers if the powers are fully exercised.

Determination of night flow between the hours of midnight and five *a.m.* is regarded as a good basis for estimating true waste, and, the report states, accurate knowledge of daily supply and consumption is indispensable if waste is to be reduced; a number of undertakings were found to have no record of minimum night flow, and others, an omission felt to be wrong.

Recognition that the country's present resources in manpower and materials preclude sufficient new capital works to keep pace with the upward trend of water consumption, was partly responsible for the working party's investigation of the best means of reducing unnecessary consumption. Many reasons were seen against a method often the subject of questions, *viz.*, metering individual domestic supplies. For instance, money saving effected by a consumer is unlikely to be a real incentive to economize in the use of water; increased cost of administration (reading and maintaining meters, preparation of detailed accounts, etc.) would probably be out of proportion with any economy; labour and materials for the manufacture and installation of meters could not be made available for many years to come; and some significance was seen in a higher consumption per head than in Britain in some fully metered undertakings in the United States, though in others appreciable reductions have been achieved.

After itemizing ways in which losses from distribution systems and domestic installations are "responsible for much of the recent increase in the consumption of water," the working party detail practical methods of detecting and preventing waste. A view that the necessity of curtailing waste required a fresh approach to the question prompted a remark that "it is imperative that senior officers should concern themselves more closely with this aspect of their work." An examination of relationships between amounts spent by a number of undertakings on wages of men employed on waste detection and prevention, and volumes of unmetered supplies, confirmed an impression that "with very few exceptions an expenditure above the average brought waste below the previous level, and that where expenditure was small waste tended to be high." The conclusion reached was that an expenditure of up to, say, ten *per cent.* of total outlay on wages for running and maintenance might well result in a satisfactory return in water saved.

A wide variety of methods now employed for recruiting and training inspection staff led the working party to consider the desirability of achieving a uniformly high standard of competency; this need could, it was thought, probably be met most satisfactorily by the establishment of regional training centres, conveniently located in more populous areas and operated under the aegis of the larger undertakings, who would be prepared to accept trainees from neighbouring undertakings. Any expenses incurred by the parent authority over and above the cost of training their own employees could be met by contributions from undertakings whose employees were being trained. Numbers available for training were regarded as generally insufficient to justify the expense of setting up a central school. Where facilities for training numbers of workmen already exist they might be extended or modified at small expense to provide the nucleus for area schools. Training should be of a practical rather than academic nature.

Ultimate saving of time and labour on detection and eradication of leakage, by adequate attention to the quality of workmanship and materials when mains are laid and tested and pipes and fittings are installed, was mentioned, before reference to disadvantages of the present wide diversity of water fittings. Standardization of fittings within a limited range would be welcomed but any move to prohibit departure from a series of detailed specifications would probably do more harm than good by stifling improvements in design. Most small undertakings have no means of checking the suitability of fittings and the working party felt that it would be of great assistance if those undertakings indicated their readiness to accept fittings stamped by another water undertaking which has the facilities for doing

so. They consider it desirable that all water fittings should be tested and stamped. A number of statutory water undertakers are proposing to exercise the power conferred by the Water Act, 1945, to supply water fittings in addition to providing materials and carrying out work of installation and repair.

Many of the Ministry of Health's model byelaws (series XXI) dealing with prevention of waste serve to emphasize the vital role played by, among other things, support and protection of installations. Precautionary measures urged, as an example, were steps by housing authorities to ensure that pipes in exposed positions are lagged, that cisterns are protected and that cold water pipes and cisterns in new houses are placed in sheltered positions. Close consideration by undertakers of free re-washering of taps and minor repair of faulty fittings in the course of routine inspection, is recommended.

Results of a demonstration of an electrical detector of underground leakage prompted the working party to express the view, in the course of a discussion of various methods of waste detection, that there is "ample evidence of the potential value of an efficient electrical detector." Subject to requirements for fire fighting, which are, however, often more dependent on volume of flow at the hydrant rather than pressure, the recommendation is made that undertakers should satisfy themselves that pressures are not in excess of those necessary to meet local conditions. Sources of waste in connexion with automatic flushing cisterns are specified, and mention made of a departmental committee at present considering acute problems arising from corrosion of mains and service pipes.

Finally, following information and helpful suggestions about possible savings in connexion with industrial use of water, the working party dealt with public relations activities designed to impress the need for economy of water on all consumers. A national campaign of propaganda against waste of water was not regarded favourably. "Lasting co-operation of consumers is more likely to be encouraged," the working party state, "by informative publicity than by repeated injunctions not to waste water." Nevertheless, they think that "physical means are more likely to produce lasting results than propaganda," a remark in harmony with the practical background evident throughout the report.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Lewis and Cassels, JJ.)

R. *v.* MATTHEWS

December 16, 1949

Criminal Law—Receiving stolen property—Direction to jury—Original taking innocent—Subsequent change of intent—Taking not converted into felony.

APPEAL against conviction.

The appellant was convicted at Hampshire Quarter Sessions of receiving stolen property. He pleaded Guilty to two charges of obtaining property by false pretences and asked for eight other offences to be taken into consideration, and he was sentenced to seven years' preventive detention. The appellant had received property which he knew to be stolen, but he put forward the defence that when he received it his intention was to hand it over to the police. He did send a telephone message to the police, but when the police came to see him and took him away in a police car, he did not hand over the property to them, but removed it from his pocket and secreted it behind the seat of the car where it was found on the following day. The chairman directed the jury: "... You may think that when he telephoned to the police, he may have been intending to hand over the stolen property. Assume that he did, if he changed that intention, then we are in this position. He received property which was stolen, which he knew to be stolen, and having no guilty intent originally, nevertheless he changed that intent and kept it, and my instructions are that in these circumstances there is no defence [to this charge] because the guilty intent was present when he did not hand it over to the police."

Held, that if the original taking of property was innocent in the sense of being neither felonious nor tortious, the fact that the person who had taken the property subsequently changed his mind and misappropriated the property did not render the taking a felony. There was, therefore, a misdirection in law by the chairman, and the conviction of receiving must be quashed.

Counsel: *H. Summerfield* for the appellant; *E. S. Fay* for the Crown.

Solicitors: *Registrar of Court of Criminal Appeal*; *Director of Public Prosecutions.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Lord Goddard, C.J., Hilbery and Cassels, JJ.)

December 12, 1949

R. *v.* PAYNE

Criminal Law—Sentence—Plea of Guilty by one prisoner—Plea of Not Guilty by co-prisoners—Sentence on prisoner who pleads Guilty to be deferred—Sentence to be passed forthwith only where prisoner to be called as Crown witness.

APPEAL against sentence.

The appellant was indicted at Essex Quarter Sessions on a charge of housebreaking, together with two other men. The appellant pleaded Guilty on the first day of the sessions and was forthwith sentenced to two years' imprisonment. The other two men pleaded Not Guilty, and on the following day they were tried before a different chairman and convicted. They received sentences of twelve and fifteen months' imprisonment respectively.

Held, that in such a case the proper course was to postpone sentence on the prisoner who had pleaded Guilty until his co-prisoners had been tried. In a case, however, where it was intended to call the prisoner who had pleaded Guilty as a witness for the Crown, it was the general, and, in the opinion of the court, the proper, practice to sentence him at once so that he should not be under the suspicion that his evidence might be coloured by the hope of receiving a lighter sentence because of the evidence which he was giving. On the facts the sentence would be reduced to one of fifteen months' imprisonment.

No counsel appeared.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PRACTICE NOTE

Criminal Law—Sentence—Corrective training—Preventive detention—Supervision order—Service of notice—No caution by police officer necessary—No notice to produce notice required—Criminal Justice Act, 1948 (11 *and* 12 *Geo.* 6, *c.* 58), *s.* 21 (1), (2), *s.* 22 (1), *s.* 23 (1).

The court referred to two matters of practice under ss. 21—23 of the Criminal Justice Act, 1948, and stated: (i) when a notice under s. 23 (1) is served on a prisoner regarding previous convictions and he is asked whether he admits them or not, it is not necessary that a caution should be administered by the police officer who serves the notice. (ii) a police officer is entitled to give evidence of the contents of the notice which he has served on the prisoner without having given the prisoner notice to produce the notice.

KING'S BENCH DIVISION

(Before Lord Goddard, C.J., Humphreys and Hilbery, JJ.)

R. *v.* MINISTER OF TOWN AND COUNTRY PLANNING: *Ex parte* MONTAGUE BURTON, LTD. AND OTHERS

December 19, 1949

Town and Country Planning—Order of Minister—War damage—Land to be subject to compulsory purchase—Act not coming into force immediately—Application under previous Act—Continuance on coming into force of later Act—Town and Country Planning Act, 1944 (7 *and* 8 *Geo.* 6, *c.* 47), *s.* 1—*Town and Country Planning Act,* 1947 (10 *and* 11 *Geo.* 6, *c.* 51), *Sch. IX, Sch. X, para.* 16—*Interpretation Act,* 1889 (52 *and* 53 *Vict., c.* 63), *s.* 37.

APPLICATIONS for orders of *certiorari.*

In the first application Montague Burton, Ltd., of Hudson Road Mills, Leeds, sought to have removed into the High Court for to be quashed an order dated February 22, 1949, made under s. 1 of the Town and Country Planning Act, 1944, declaring certain land in the central area of Kingston-upon-Hull to be subject to compulsory purchase for the purpose of dealing with war damage. Similar applications were made by C. B. North, Ltd., of Hedon Road, Hull,

in respect of an order of the Minister in relation to land in the Drypool area of the city, and by Mr. Stanley Howard Burton, a company director, of Courtfield, Harrogate, and others, in respect of an order relating to land in the central area of Liverpool.

It was stated in an affidavit sworn by Mr. Hubert Aubrey Dodman, a solicitor, acting for Montague Burton, Ltd., that that company were the owners of land and premises in the central area of Hull concerned. On December 23, 1947, Hull Corporation applied to the Minister of Town and Country Planning for an order under s. 1 of the Town and Country Planning Act, 1944, declaring land in the central area of the city to be subject to compulsory purchase for the purpose of measures relating to war damage. By letter dated June 16, 1948, the Minister, in exercise of his power under para. 16 of sch. X to the Town and Country Planning Act, 1947, directed that proceedings on Hull Corporation's application under s. 1 of the Act of 1944 should be continued under that Act after the day appointed for the coming into force of the Act of 1947, namely, July 1, 1948. On February 22, 1949, a public local inquiry having been held on and between June 1 and 24, 1948, the Minister made the order now challenged. Paragraph 16 of sch. X to the Town and Country Planning Act, 1947, and all other sections of the Act relevant to the application only came into force on July 1, 1948, on which date the Act of 1944, subject to provisions in the Act of 1947, was repealed. The applicants contended that the Minister had no power to give the direction of June 16, 1948, or to make the order of February 22, 1949.

By part II of sch. IX to the Act of 1947 parts of the Act of 1944, including s. 1, were repealed "as from the appointed day,"—July 1, 1948. By para. 16 of sch. X to the Act of 1947: "Where, at any time before the appointed day, application has been made to the Minister for an order under s. 1 of the Act of 1944 . . . the Minister may . . . direct that proceedings on the application shall be continued under that Act after that day . . ."

By s. 37 of the Interpretation Act, 1889: "Where an Act . . . is not to come into operation immediately on the passing thereof, and confers power to make any . . . instrument . . . or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act . . ."

Held, that, having regard to s. 37 of the Interpretation Act, 1889, the Minister's direction of June 16, 1948 was *intra vires* and that all the applications, therefore, failed.

Counsel: *C. L. Henderson, K.C.*, and *Glidewell* for the applicants; *The Attorney-General (Sir Hartley Shawcross, K.C.)* and *H. L. Parker* for the Minister; *M. Lyell* for Hull corporation; *P. M. O'Connor* for Liverpool corporation.

Solicitors: *Warren, Murton & Co.*, for *T. Priestman, Sons & Slack*, Hull, and *H. A. Dodman*, Leeds; *Treasury Solicitor*; *Sharpe, Pritchard & Co.* for *E. H. Bullock*, town clerk, Kingston-upon-Hull; *Cree, Godfrey & Ward*, for *Thomas Alker*, town clerk, Liverpool.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Lord Goddard, C.J., Hilbery and Cassels, JJ.)
December 15, 1949

PILLING v. ABERGELE U.D.C.

Public Health—Movable dwellings—Licence by local authority—Refusal—Refusal of use of site by local authority—Detriment to amenities of district—Restriction of local authority to matters of public health and sanitation—Public Health Act, 1936 (26 *Geo.* 5 *and* 1 *Edw.* 8, *c.* 49), *s.* 269 (1).

CASE STATED by Denbighshire justices.

The appellant, Samuel Pilling, was the owner and occupier of a piece of land which lay behind a café, which he also owned, on the main coast road which passed through Pensarn. On April 21, 1949, Abergele Urban District Council refused to grant the appellant a licence under the Public Health Act, 1936, s. 269 (1), authorizing him to allow the land to be used as a site for movable dwellings on the ground "that the site is unsuitable because such use would be detrimental to the amenities of the district, particularly on account of the close proximity of other dwellings." The appellant appealed to a court of summary jurisdiction at Abergele from that refusal, contending that, as the Act related only to public health and sanitary matters, the justices were not entitled to refuse the licence on the ground on which they had. The justices, being of opinion that local authorities were not restricted under s. 269 (1) as to the grounds on which they might refuse a licence, dismissed the appeal. The appellant appealed to the Divisional Court against that decision.

By s. 269 (1) of the Act: For the purpose of regulating in accordance with the provisions of this section the use of movable dwellings within their district, a local authority may grant—(i) licences authorizing persons to allow land occupied by them within the district to be used as sites for movable dwellings . . .

Held, that the justices were wrong in holding that the local authority had an unrestricted discretion to refuse a licence under s. 269 (1); that the local authority were entitled to consider the matter from the point of view of public health and sanitation only; their reason of refusing the licence was a wrong one, and they should have allowed the appeal to them; and, therefore, the present appeal must be allowed.

Counsel: *H. A. Hill* for the appellant; *Baucher* for the respondent local authority.

Solicitors: *Vizard, Oldham & Co.* for *Chamberlain, Johnson & Parke*, Llandudno; *Jacques & Co.* for *Cyril Jones, Son, & Williams*, Wrexham.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

NEW YEAR HONOURS

KNIGHTS BACHELOR

Adcock, Robert Henry, clerk of Lancashire county council.
Bass, Leslie Stuart, legal adviser, Home Office.
Maby, Charles George, chief constable, Bristol.
Pereira, Horace Alvarez de Courcy, senior registrar, Principal Probate Registry.

ORDER OF THE BATH

C.B.
Enever, F. A., principal assistant solicitor, office of H.M. Procurator-General and Treasury Solicitor.

ORDER OF THE BRITISH EMPIRE

G.B.E.
Eve, Sir (Arthur) Malcolm Trustram, K.C., lately chairman, Central Land Board and War Damage Commission.

K.B.E.
Mitchell, Sir Miles Ewart, for services to local government.

C.B.E.
Cole, O. J. B., chief constable of Leicester.
Davis, E. T., chief education officer, West Sussex.
Gibbons, C. J., assistant secretary, Central Land Board and War Damage Commission.
Stranger, Alderman R. J., for public services in Southampton.

ROYAL VICTORIAN ORDER

G.C.V.O.
Merriman, The Rt. Hon. Boyd, Baron.

ORDER OF THE BRITISH EMPIRE

O.B.E.
Goodchild, N. W., chief constable, Wolverhampton borough police.
Keesey, W. M., lately H.M. inspector of schools, Ministry of Education.

THE KING'S POLICE AND FIRE SERVICE MEDAL

Bennett, S., chief constable, Bournemouth.
Brooks, W. S., superintendent, Berkshire constabulary.
Cuthbert, C. R. M., superintendent, Metropolitan police.
Frankish, H., superintendent, Birmingham police.
Frost, N., chief constable, Eastbourne.
King, A. T., chief superintendent, Metropolitan police.
C. G. Looms, chief constable, Blackburn.
Morgan, G. A., chief inspector, Liverpool.
Peel, F. C., superintendent, West Sussex constabulary.
Pickering, T., superintendent, Lancashire constabulary.
Tompkins, P., chief constable, Denbighshire constabulary.
Wilkins, J. L., superintendent, Glamorganshire constabulary.

NEW COMMISSIONS

KENT COUNTY

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Frederick William Ewart Dawes, Keir Hardie, Weald View Road, Tonbridge.
William Philip, Baron L'Isle and Dudley, V.C., Penshurst Place, Tonbridge.
Mrs. Marjorie Dougal, Downderry, Lancet Lane, Loose.
Arthur Gregory Mack, 154, Bromley Road, Beckenham.
Edwin Thomas Maidment, 6, Royal Avenue, Tonbridge.
Fitzwalter Brook Plumtre, West House, Goodnestone, Canterbury.
Mrs. Norah Salmon, Yardley Lodge, Yardley Park Road, Tonbridge.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 1.

RED PETROL—A NOVEL POINT

Readers may recollect that an article under this heading appeared at p. 649 of last year's volume.

The report was of a case heard at Edinburgh Sheriff's Court, where two analysts had said, in a case brought under s. 2 of the Motor Spirit (Regulation) Act, 1948, that by applying the prescribed tests the sample of petrol analysed gave a colour reaction indicative of diphenylamine (the prescribed ingredient which, when added to any motor spirit makes, for the purposes of the Act, the spirit commercial petrol) but that they were unable to affirm positively that it was in fact present as the same reaction could be obtained from certain other related substances.

The sheriff found the case not proven, and I commented that it would be of interest to observe what steps would be taken to amend the regulations.

The Minister acted with great expedition for the case was heard on October 19, and, on October 28, there came into force the Motor Spirit (Amendment) (No. 2) Regulations, 1949, which provided that thereafter the expression "diphenylamine" should be deemed to include any nuclear substituted diphenylamine, thus covering the point made by the analysts in the Scottish case.

I am indebted to Mr. G. B. Adams, clerk to the justices West Ham magistrates' court, for information of a further development in this matter which is of interest to all motorists.

There appeared before Mr. J. P. Eddy, K.C., the learned stipendiary magistrate at West Ham on December 14, a cafe hand who was summoned for having commercial petrol in the tank of a private motor vehicle of which he was in charge contrary to s. 2 of the 1948 Act.

The Public Analyst, called for the prosecution, stated that as a result of the decision in the Scottish case he had carried out extensive work and had devised a new method of detecting the presence of diphenylamine so that it revealed a difference, although a very slight one, between diphenylamine and other substances, and in consequence he thought that the amendment of the Motor Spirit Regulations referred to above had become unnecessary.

The defence relied upon the Scottish case, but the learned magistrate pointed out that the sheriff had stated in that case that the evidence for the prosecution must be clear beyond shadow of doubt, but he (the stipendiary magistrate) was content to say with regard to that decision that in England the proof required in a criminal case was proof beyond reasonable doubt, and he referred to the judgment of Mr. Justice Denning (as he then was) in *Miller v. Minister of Pensions*, [1947] 2 All E.R. 372, that proof beyond reasonable doubt did not mean proof beyond a shadow of doubt.

The learned magistrate added that, in view of the evidence given before him by the Public Analyst he thought that the Scottish decision need no longer occasion concern in relation to the working of the Act and he imposed a fine of £5 and ordered the defendant to pay £5 5s. costs and disqualified him for one year from holding or obtaining a licence.

COMMENT

The combination of this decision and the amended regulations appears without doubt to have restored the status quo and the next step in the unceasing battle of wits between those determined to motor for pleasure and those equally determined that they shall only do so upon rare occasions is awaited by the writer with interest.

R.L.H.

No. 2.

AN OVERCROWDED VEHICLE

The driver of a shooting brake appeared before the Kendal Justices on November 19, 1949.

The first charge preferred against him alleged that being the driver of the shooting brake he was, upon a specified occasion, in such a position that he could not have proper control over the vehicle, contrary to reg. 82 (2) of the Motor Vehicles (Construction and Use) Regulations, 1947.

The second summons alleged that he had used the said vehicle when the number of passengers carried was such that danger was likely to be caused to any person in the vehicle contrary to reg. 67 (1) of the said regulations.

For the prosecution it was stated that at midnight on September 10, when the defendant driver was taking twelve persons home to Shap after a dance at Kendal, the brake struck a telegraph pole; the body of the brake was wrenched off the chassis as a result of the collision and eight persons on the two rear seats were thrown out and two passengers suffered fatal injuries.

The vehicle was licensed to carry eight persons and a police officer stated that the front seat was meant for two persons and the gear lever and hand brake were in the centre. On the occasion of the collision two people and the driver were sitting abreast and a girl was on the knees of the nearside passenger.

The defendant, who pleaded not guilty, admitted that there were twelve people in the vehicle but said that his driving was not affected in any way by this fact. The vehicle handled perfectly until he ran into a patch of fog at the scene of the accident and when he applied the brakes the car skidded.

The defendant was found not guilty on the first charge but was convicted on the second charge, and fined £20 and ordered to pay £2 2s. costs.

COMMENT

The regulations referred to above are very wide in their scope and have been so carefully drawn that fatal accidents on the road would be reduced to negligible proportions if all motorists studied them carefully and resolved to abide by them.

Regulation 67 provides in subs. 1 that every motor vehicle and all parts and accessories of the same shall at all times be in such condition, and the number of passengers carried by, and the weight, distribution, packing and adjustment of the load, of such vehicle, shall at all times be such that no danger is caused or is likely to be caused to any person *on the vehicle or on the road*.

There is a proviso to the subsection to the effect that in the case of a public service vehicle, the provisions of the regulation as to the number of passengers carried shall be deemed to be complied with if the number does not exceed that for the time being permitted by regulations made by the Minister of Transport with regard to the equipment and use of public service vehicles.

Offences under part III of the regulations (which includes reg. 67) may be punished by a fine of £20.

(The writer is indebted to Mr. Ernest Temple, clerk to the Kendal justices, for information in regard to this case.)

R.L.H.

PENALTIES

Salisbury—November, 1949—assaulting a police officer in the execution of his duty—fined £5. To pay 12s. 6*d*. costs. Defendant, a twenty-nine year old test engineer, was seen by a police officer in mufti in the front garden of a house at night; he challenged the man and showed him his warrant card by the light of a torch. Defendant then struck him in the body knocking him off his balance and ran away but the police officer caught him and was then struck several blows.

Taunton—November, 1949—(1) stealing an overcoat and razor value £9 10s., (2) stealing a mackintosh value £1 1s. 2*d*., (3) obtaining £1 15s. from a landlord by means of fraud—twelve months' imprisonment. Defendant, a thirty year old labourer of no fixed address.

Edinburgh Sheriff's Court—November, 1949—breaking into a grocer's shop and stealing 1,050 cigarettes and £4 17s. cash—six months' imprisonment. Defendant, a labourer of no fixed abode, had fourteen previous convictions.

West Bromwich—November, 1949—stealing 10s. 10*d*.—fined £5. Defendant, a bus conductor aged forty-six, took ninety-six fares without punching tickets. He pleaded guilty and stated he had lost his employment.

Salisbury—November, 1949—(1) taking a car without the owner's consent, (2) driving without an insurance policy, (3) driving without a licence—(1) fined £2, (2) fined £5, (3) fined £1. Disqualified from driving for twelve months. Defendant, a twenty-two year old soldier, stated that he took the car to return to camp after he had missed a bus.

Salop Assizes—November, 1949—indecently assaulting four twelve year old boys and one thirteen year old boy—two years' imprisonment. Defendant, an assistant master, asked for two cases of gross indecency with a male to be taken into consideration.

Salop Assizes—November, 1949—indecent assault—conditional discharge for twelve months. To pay £20 towards the cost of the prosecution. Defendant, a twenty-one year old bricklayer's labourer, attacked a married woman with three children at night, throwing her to the ground.

Bow Street—December, 1949—failing to give particulars of an order for endorsement when applying for a driving licence—fined £5.

Bow Street—December, 1949—failing to give particulars of an order for endorsement when applying for a driving licence—fined £7 (here the undisclosed endorsement was of a more serious nature and was more recently awarded than that in the previous item).

CORRESPONDENCE

[The Editor of the *Justice of the Peace and Local Government Review* invites correspondence on any subject dealt with in its columns, for example, magisterial matters, probation, local government, etc.]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

MAGISTRATES' COURTS

I think it is about time that the magistrates' courts followed the example of the county courts, and exhibited outside their premises a large and clearly lettered sign indicating that a magistrates' court is held in the building.

The average court, both in the provinces and in London, is singularly deficient in this respect.

A number of buildings exhibit a coat of arms which may or may not indicate the existence of a court, and some bear the words "Police Court" dimly discernible under an accumulated layer of grime. Some courts are held in the dim recesses of a town hall, but there is usually no clue as to whether the building in which a court is held is a public library, rate collectors' office, technical school, or what have you.

In the course of my travels I have developed a sixth sense, which enables me to "smell out" most courts (though one at least has completely baffled me), but the average witness and defendant have not (it is to be hoped) acquired this faculty; and should receive some consideration.

Yours faithfully,
A SOLICITOR.

[Name and address supplied. *Ed. J.P. & L.G.R.*]

PERSONALIA

APPOINTMENT

Mr. Albert Henry Walters has been appointed by the Board of Trade to be assistant official receiver for the bankruptcy district of the county courts of Bristol, Bath, Bridgwater, Cheltenham, Frome, Gloucester, Swindon and Wells; and also for the bankruptcy district of the county courts of Exeter, Barnstaple, Taunton and Torquay.

RETIREMENT

Sir Wilson Jameson, G.B.E., K.C.B., M.D., F.R.C.P., D.P.H., K.H.P., chief medical officer of the Ministry of Health and of the Ministry of Education, is retiring in May, 1950. Sir Wilson Jameson has been chief medical officer since November, 1940. The Minister of Health and the Minister of Education have appointed John Alexander Charles, Esq., M.D., F.R.C.P., K.H.P., a deputy chief medical officer in the Ministry of Health, to the joint post. George Edward Godber, Esq., M.D., F.R.C.P., D.P.H., has been appointed deputy to the chief medical officer in succession to Dr. Charles.

OBITUARY

Mr. Justice Lowry died recently in Belfast at the age of sixty-five. He was called to the Irish Bar in 1907 and to the Inner Bar in 1926. He became a judge of the High Court of Justice in Northern Ireland in May, 1947.

Captain Herbert Reginald Vyvyan, O.B.E., chief constable of Devon from 1907 to 1931, died recently at Worthing, Sussex, at the age of eighty-seven.

Major Thomas William Forde, high sheriff of County Down in 1934, died on December 20, at the age of fifty.

Councillor Mrs. Mary Ann Hennessy, wife of Alderman W. H. Hennessy of Bristol, died recently. She had been a member of the Bristol City Council since 1936.

CAPITAL creates a problem

INCOME supplies a need

The capital required to secure even a moderate income for dependants, during the early years of married life, is beyond the means of most men. The purpose of the "Safeguard" Policy is to provide income in the event of death during these years at a premium which is only slightly greater than that for an ordinary Life Policy—the income benefit being combined with either Whole Life or Endowment Assurance. Full particulars, with an illustration applicable to your own case, will be sent to you if you will write to the address below, stating your date of birth.

LEGAL & GENERAL

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PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Contract—*Misdescription of land demised—Mutual mistake—Rectification.*

I would refer you to P.P. 3 at 113 J.P.N. 758.

Bearing in mind that Y is actually enjoying a less area than was demised by the lease can the council compel him to pay the rent mentioned in the lease, namely, £2 16s. per annum? AFTER.

Answer.

On the same assumptions as in our answer about X, we think that the council may be able to compel Y to pay the full stipulated rent. As said, however, at the end of our answer about X, is the game worth the candle? Even in the course of the remaining ninety years or so, the shillings at stake will hardly equal the costs which would be involved in contested proceedings. And Y, who did not prepare the deed, and has consistently objected to paying the full amount named in it, is in a much stronger position to apply for rectification, if the council force him into doing so, than are the council, who did prepare the deed out of which the trouble arises.

2.—Criminal Law—*Two charges apparently identical—Different in fact.*

An official of the Ministry of Food has recently issued two summonses against the same defendant relating to the unauthorized slaughter of a pig. The two summonses are in fact duplicates, but I am informed that though this is obliged to be the case, since there is no means of distinguishing the pigs' carcases, evidence can and will be given that there were two separate pigs. When these cases are heard and the first charge is disposed of, if, when the second charge was read, the defendant's solicitor objected to the case being heard on the ground of *autrefois convict* or *acquit* (as the case may be) would the court have power to insist on the evidence being heard?

Do you consider that the better course would have been to have included both pigs in one charge?

I shall be obliged for your valued opinion. SILEX.

Answer.

There is nothing in such an objection. The point is not whether the two summonses could have referred to one and the same pig, but whether they did. Evidence would at once dispose of the objection, and the law is not defeated by such a contention as is suggested. As there are, in fact, two offences alleged, the issue of two summonses is not open to objection.

3.—Fine—*Repayment after successful appeal.*

I had recently in my court a case where a defendant was found guilty of larceny on a summary trial, and fined the sum of £2 including costs. The fine was paid by the defendant. He then gave notice of appeal to the quarter sessions, and this appeal was successful. The defendant is now asking to be repaid the fine of £2. I cannot find any provision which states that I am able to repay this fine and I have in my mind that I have seen some provision that it cannot be repaid if it has once been paid. I do not think this can possibly be right and I am wondering if you can help me. SESS.

Answer.

We have no doubt the appellant is entitled to repayment if his conviction is quashed, and it is certainly the practice to repay. We think that if the clerk still has the fine he should re-imburse the defendant, but that if it has been paid over to the county treasurer, the county treasurer should be asked to make the repayment or, alternatively, to authorize the clerk to do so.

4.—Highways Act, 1835—*Hurt caused by negligence—Loose bar at back of vehicle injures pedestrian—Is this an offence, by the driver, under s. 78?*

A defendant is summoned under s. 78 of the Highway Act, 1835, for "being the driver of a motor vehicle on a highway did by negligence cause hurt to a person being upon such highway." At the hearing the following is proved or admitted: the defendant is driving a goods vehicle in a normal and careful manner at a speed of eight to ten miles per hour when an iron bar attached to and forming part of the rear of the vehicle knocks down a pedestrian walking on the pavement. The iron bar, which is used for securing the load, had not been properly secured and was swinging loose over the pavement. Counsel for the defendant then submitted that the information should be dismissed as there had been no negligence in driving. The negligence, if any, in failing to secure the bar was not connected with the driving of the vehicle. *Shears* v. *Matthews* [1948] 2 All E.R. 1064; 113 J.P. 36, was quoted.

On retiring, the justices (six in number) were equally divided. Three were satisfied that there had been no negligence in driving, that the Lord Chief Justice's dictum in *Shears* v. *Matthews* must be followed and the information dismissed. The remaining three felt that *Shears* v. *Matthews* did not help as the circumstances were totally different, that it was the duty of the driver to ensure that the bar was secure, and that an offence had been committed.

A re-hearing was ordered before different justices, and your opinion is requested as to which half of the justices arrived at a correct decision. J.AK.

Answer.

The Lord Chief Justice emphasizes the fact that what is aimed at is "negligence in driving."

It is, of course, for the justices to decide the facts of the case, but it would appear that as they are stated in the question the matter is governed by *Shears* v. *Matthews*, *supra*, and that the offence as charged was not proved, *see* 113 J.P.N. 309.

5.—Husband and Wife—*Desertion—Neglect to maintain—Wife in Scotland—Husband in England.*

In March, 1941, Mrs. T married Mr. T, then a serving soldier, the marriage taking place in Scotland. Mr. T is a Scotsman born of Scottish parents. Shortly after the marriage the husband was posted abroad and returned in December, 1943. There was one child of the marriage, born in January, 1943. In January, 1944, Mr. T was again sent overseas and while he was serving abroad Mrs. T lived in Scotland where she remained until Mr. T's demobilization in January, 1946. The parties then lived together in Scotland. The marriage broke up and Mr. T obtained work in London. In January, 1947, he purchased a business in S, England, where the wife lived with him. Owing to the husband's cruelty the wife returned to Scotland with the child of the marriage. As soon as the wife left, the husband sold the house and furniture and subsequently the business. After the wife had been home for two weeks she went back to the husband and all he offered her to sleep on was a camp bed in an empty room. The husband said that if she wanted a home to live in she would have to look for it but that he would not pay for it. The parties continued to cohabit but the wife was always kept very short of money and was under constant threat of ill-treatment from the husband.

Eventually the parties went to M, England, but the husband's conduct towards the wife was so unbearable that she returned to Scotland in September, 1947. The husband followed her and lived in the same town as the wife but contributed nothing towards the support of herself and the child, the wife being kept by her mother. The husband then obtained work at I, Scotland, from where he sent the wife some maintenance. In December, 1948, the wife went to I, Scotland, and cohabited with the husband. Finally, the latter lost his job and the wife returned to her home in P, Scotland. The husband went to live with his parents, also in P, Scotland, but did not go to see his wife and child and did not send any money for their maintenance. On March 11, 1949, the husband went to see the wife and told her that he was leaving that night for F, England, and said, "I will never live with you again and you are no responsibility of mine." The husband commenced work in F, England, but has contributed nothing to the support of the wife or child. The wife is still living in P, Scotland, and the husband continues to work at F, England. It is apparent that the husband cannot be summoned for maintenance in Scotland but the wife is anxious to bring proceedings at F, England.

An opinion is sought as to whether there is jurisdiction to issue such process at F, England, having regard to the cases of *Forsyth* v. *Forsyth* [1947] 1 All E.R. 406, and *Manning* v. *Manning* (1871) L.R. 2 P. The clerk to the justices at F, England, takes the view that his court has no jurisdiction.

The facts of the case have been set out somewhat fully above so as to make clear what cause of action, if any, has arisen in England. STACK.

Answer.

Even if there was desertion in M, England, that came to an end when the wife rejoined the husband and lived with him in Scotland.

She no doubt alleges that he deserted her in Scotland when he left her to come to E. England, and said he would never live with her again. In our opinion, a wife who is living in Scotland and alleges desertion to have begun there cannot have recourse to an English court. If she follows him to England and asks him to resume cohabitation, the refusal by him of a reasonable offer made in good faith would no doubt justify the issue of a summons on the ground that there would then be a *prima facie* case of desertion in England to answer.

Somewhat different considerations apply where the allegation is wilful neglect to maintain, because it is not necessary to attempt to fix any date when, or place where, the neglect began, the question for the court being whether there was such neglect when the summons was issued or within six months previously. If there has been wilful neglect to maintain by the husband, he being in England, we think his wife may come to this country and apply for a summons on that ground, there being a cause of complaint now in England. The husband may, however, set up the defence that according to Scots law he was justified in breaking off relations with his wife and that he is under no obligation to maintain her. This seems rather unlikely, and we think it is for him to prove it.

We do not think the cases cited affect this case, because the jurisdiction depends on the place where the cause of complaint has wholly or partially arisen and on the presence of the defendant in this country when the summons is issued.

The wife would be well advised to remind her husband of his obligations and to ask him to provide maintenance, before she applies for her summons. She may apply to the court for the division in which he is living : *Clarke* v. *Clarke* [1942] 2 All E.R. 274 ; 106 J.P. 240.

We would add that if a Scottish court were to issue a summons, it could be served in England under the Summary Jurisdiction (Process) Act, 1881.

6.—Road Traffic Acts—*Accident—Section 22 of the 1930 Act—Damage to a handcart—Is this a "vehicle?"*

An accident occurs, involving a motor car and a handcart, in which both vehicles are damaged. Having in mind *Pugett* v. *Mayo* [1939] 2 All E.R. 362 ; 103 J.P. 177, does the motorist in your opinion become liable to report the accident under s. 22 of the Road Traffic Act, 1930? In other words is a "handcart" a vehicle for the purposes of the Road Traffic Act, 1930? I would add that the accident occurred on a public road and no one sustained personal injury.

JOP/EBORACUM.

Answer.

In *Ellis* v. *Nott-Bower* (1896) 60 J.P. 760 (which decided that a bicycle is a vehicle) Grantham, J., said : "Primarily a vehicle includes any means of conveyance." We think that a handcart is a vehicle within the meaning of s. 22 of the 1930 Act, as being a means of conveyance for goods.

The accident should be reported.

7.—Road Traffic Acts—*Insurance—Policy alleged to be invalid because of misrepresentations by insured—Can prosecution call evidence of the invalidity in support of a charge under s. 35 of the 1930 Act?*

A is prosecuted for driving a motor car without being covered by insurance contrary to the Road Traffic Act, 1930, s. 35. A produces a certificate of insurance which is regular on its face and purports to cover A's driving. The prosecution, however, alleges that the certificate and policy are invalid as they were issued on the foot of a proposal form signed by A which contained misstatements by A sufficient to make the policy void. No civil proceedings have been taken by or against the insurance company to test the policy and no claim has been made under it.

Can the prosecution adduce evidence to show that the policy and certificate are void for the reason alleged so that A may be convicted of the offence charged?

Would it make any difference if A were driving B's car with B's permission, such driving being covered by B's policy which the prosecution stated was similarly invalid because of B's misstatements?

It will be appreciated that *McCormick* v. *National Motor and Accident Insurance Union* (1934) 50 T.L.R. 528 and *Guardian Assurance Co.* v. *Sutherland* [1939] 2 All E.R. 246, were civil proceedings.

A reference to authorities in support of your opinion will be appreciated.

JARVEY.

Answer.

A material issue in charges under s. 35 is whether there was in force a policy covering the user of the vehicle in question by the person then using it (*see March* v. *Moores* [1949] 2 All E.R. 27 ; 113 J.P. 346). In *Guardian Assurance Co.* v. *Sutherland* (*supra*) Branson, J., says, at p. 249 : "A policy obtained by misrepresentation of material facts insures no one and so cannot be held to be such a policy," etc.

We think, therefore, that the prosecution must be entitled to call evidence on the point and that if that evidence satisfies the court that the insurance company would be entitled to and would repudiate liability because of material misrepresentations the court is entitled to find that there was no insurance policy in force at the relevant time.

We are of opinion that, if the prosecution satisfy the court as we have indicated, A would not be covered either by virtue of his own or of B's policy and would be liable to be convicted.

8.—Road Traffic Acts—*"Use" of vehicle—Can owner and hirer, not driving or present, be convicted of "using" a vehicle instead of "permitting" and "causing" its use?*

Smith is the owner of a tractor licensed and insured only for agricultural purposes. Jones is a builder and Brown is his workman. Jones borrowed the tractor from Smith and a trailer from another person for the purpose of carting rubble from the site of a demolished cottage to a rubbish tip. The route lay along a public highway for about half a mile. Neither the tractor nor the trailer complied with regs. 30 and 50 of the Motor Vehicles (Construction and Use) Regulations. The rubble was carried in the trailer which was hauled by the tractor and the tractor was being driven by Brown. Brown was stopped by the police while taking one load along the public highway. Neither Smith nor Jones were present or assisting with the actual operations.

The following summonses have now been issued :—

1. *Against Brown.*

(*a*) For using the tractor without third party insurance.

(*b*) For using the tractor without having an efficient braking system.

(*c*) For using the tractor and trailer without having an efficient braking system on the trailer.

(*d*) For using the tractor licensed under the Finance Act so that by virtue of such use a higher rate of duty became chargeable.

2. *Against Jones.*

(*a*) For causing the use of the tractor without third party insurance.

(*b*), (*c*), (*d*) Summonses worded in exactly the same way as summonses (*b*), (*c*) and (*d*) against Brown.

3. *Against Smith.*

(*a*) For permitting the use of the tractor without third party insurance.

(*b*), (*c*) Summonses worded in exactly the same way as summonses (*b*) and (*d*) against Brown.

We are concerned especially with summonses (*b*), (*c*) and (*d*) against Jones and (*b*) and (*c*) against Smith, all of which commence with the words "did use on a road." Brown was certainly the only person who was "using" the tractor in the ordinary sense of the word and we are of the opinion that we should advise Smith and Jones to plead Not Guilty to the summonses which commence with the words "did use." We could then prove that neither of them were driving the tractor and in fact were nowhere near the scene at the time. The summonses against Smith and Jones in connexion with the lack of insurance commence "did permit the use" and "did cause the use" respectively and we feel that the others against them should be similarly worded to be effective.

In the cases against Smith and Jones for having no insurance can you also please tell us whether convictions will involve the automatic twelve months suspension of their driving licences. We realize that a conviction will in the case of Brown but we are not sure whether the same thing also applies to persons charged with "causing" and "permitting."

JARY.

Answer.

Jones (*b*) and (*c*), *Smith* (*b*).—We can find no direct authority on this point of user, but we think that although "causing" for Jones and "permitting" for Smith could properly be alleged, the summonses for using are not bad for the reasons stated later.

Jones and Smith (*d*).—We assume the summons is brought under s. 14 (2) of the Finance Act, 1922. The only offence created by this section is one of using a vehicle in the unauthorized manner, and it would not be possible to charge causing or permitting the offence. We think, however, that "using" can properly be alleged against Jones and Smith.

In all the cases on the facts given Jones and Smith appear to be aiding, abetting, counselling and procuring the commission of the offences by Brown, Jones as his employer and Smith by lending the tractor for a purpose for which he knew it ought not to be used. Aiders and abettors can be charged and convicted as principals (*Du Cross* v. *Lambourne* (1907) 70 J.P. 525).

The insurance offences against Jones and Smith involve, on conviction, disqualification unless the court finds special reasons. On the facts there do not appear to be any special reasons.

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

BOROUGH OF BURY ST. EDMUNDS

Town Clerk's Department

Appointment of Legal and General Assistant

APPLICATIONS are invited for the above newly established post at a salary in accordance with Grade III of the A.P.T. Division of the National Scales of Salaries (£450—£495).

Further particulars may be obtained from the undersigned.

Applications must reach me by first post, January 18, 1950.

The Council will provide housing accommodation if necessary, and refund reasonable removal expenses.

J. W. H. KNIGHT,
Town Clerk.

Borough Offices,
Bury St. Edmunds.
December 19, 1949.

CITY OF SALFORD

Appointment of Male Probation Officer

APPLICATIONS are invited for the appointment of a full-time male probation officer. Applicants must be not less than 23 nor more than 40 years of age, except in the case of a serving full-time Probation Officer.

The appointment will be subject to the Probation Rules, 1949, and the salary will be according to the scale prescribed by those Rules.

The successful applicant will be required to pass a Medical Examination.

Applications stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials, must reach me not later than the first post on January 28, 1950.

J. W. REAVEY,
Clerk to the Justices and Secretary of the Probation Committee.

Magistrates' Court,
Town Hall,
Salford, 3.
January 7, 1950.

METROPOLITAN BOROUGH OF HAMPSTEAD

APPLICATIONS are invited for the permanent appointment of Law Clerk in the Town Clerk's Department at a salary in accordance with Grade A.P.T. IV (£480 to £525) plus London area Weighting.

Applicants must be experienced in the work of a Solicitor's Office or the Legal Department of a local authority.

The Council's usual Conditions of Service apply and the successful candidate will be required to pass a medical examination.

Candidates must disclose in writing whether to their knowledge they are related to any member or senior officer of the Council.

Applications, endorsed "Law Clerk," setting out particulars of experience and qualifications and accompanied by copies of two recent testimonials, must be received by me not later than January 28, 1950.

The Council are unable to provide housing accommodation.

Canvassing is strictly prohibited and will disqualify.

P. H. HARROLD,
Town Clerk.

Town Hall,
Hampstead, N.W.3.

FLINTSHIRE COUNTY COUNCIL

APPLICATIONS are invited for the appointment of Assistant Solicitor in the department of the Clerk of the Peace, and of the County Council at a salary in accordance with Grade A.P.T. VIII of the National Scheme of Conditions of Service (£685 per annum rising by annual increments of £25 to a maximum of £760 per annum). Previous Local Government experience will be an advantage.

The appointment will be subject to (*a*) the National Scheme of Conditions of Service, as modified by the County Council, (*b*) the Local Government Superannuation Act, 1937, (*c*) to the successful candidate passing a satisfactory medical examination, (*d*) to the Terms of a formal agreement and (*e*) to three calendar months' notice in writing on either side.

Applications on forms to be obtained from the undersigned should be returned so as to be received not later than January 23, 1950.

W. HUGH JONES,
Clerk of the County Council.

County Buildings,
Mold.

HAYES AND HARLINGTON URBAN DISTRICT COUNCIL

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor at a salary in accordance with the National Joint Council's Scale as under, plus appropriate London Weighting:

(*a*) After admission and on first appointment within A.P.T. Divisions Grade Va (£550—£610 per annum).

(*b*) After two years' legal experience from date of admission within A.P.T. Division Grade VII (£635—£710 per annum).

Experience in conveyancing and of prosecutions in the summary jurisdiction courts is desirable, and previous municipal experience would be an advantage.

The appointment is subject to (*a*) the Council's Scheme of Conditions of Service, which is based on the National Scheme with minor amendments, (*b*) the Local Government Superannuation Acts, 1937 and 1939, (*c*) the successful candidate satisfactorily passing a medical examination and (*d*) one month's notice on either side.

Forms of application and further particulars and conditions of appointment may be obtained from the undersigned to whom completed applications should be returned not later than January 23, 1950.

A. E. HIGGINS,
Clerk of the Council.

Town Hall,
Hayes,
Middlesex.

INQUIRIES

DETECTIVE AGENCY (HOYLAND'S) (T. E. Hoyland, **ex-Detective Sergeant**); Member of British Detectives Association and Federation of British Detectives. **Divorce,** Process serving, Observations, **Confidential investigations** and Status inquiries anywhere. Male and Female staff. **Over** 150 **Agents in various parts of the country.**—1, Mayo Road, Bradford. Tel.: Bradford **26823** day or night. Telegrams: "Evidence" Bradford.

BOROUGH OF COLCHESTER

Assistant Solicitor

APPLICATIONS are invited for the post of Assistant Solicitor in the Town Clerk's Department at a salary in accordance with the recommendations of the National Joint Council for Local Authorities' Administrative, etc., Services (A.P.T. Grades V (*a*)—VII according to legal experience after admission).

Applicants will be required to assist in the general work of the office and previous local government experience will be an advantage but is not essential. The appointment will be subject to the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination. The appointment will be terminable by one month's notice on either side.

Applications endorsed "Assistant Solicitor" and stating age, present salary, qualifications and experience, and the names and addresses of two persons to whom reference may be made, must reach the undersigned not later than January 25.

Canvassing will disqualify, and an applicant who is related to a member or a senior officer of the Council must disclose the fact in his application.

N. CATCHPOLE,
Town Clerk.

Town Hall,
Colchester.
January 4, 1950.

Amended Advertisement

COUNTY BOROUGH OF GRIMSBY

Town Clerk's Department

APPLICATIONS are invited from suitably qualified persons for the appointment as a Legal Assistant in the Town Clerk's office. Salary A.P.T. Grade III. The post is established and the successful candidate will be required to undergo a medical examination. The Council cannot undertake to provide housing accommodation.

Applications, stating the examination qualification held and giving the names of three persons to whom reference can be made, should be sent to the undersigned on or before January 21, 1950.

L. W. HEELER,
Town Clerk.

Municipal Offices,
Town Hall Square,
Grimsby.
December 30, 1949.

The National Association of Discharged Prisoners' Aid Societies (Incorporated)

Affiliated to The International Penal and Penitentiary Commission

Patron: H.M. The King

FUNDS AND LEGACIES URGENTLY NEEDED

Registered Office:

St. Leonard's House, 66, Eccleston Square, Westminster, S.W.1. Tel.: Victoria 9717/9

BOROUGH OF BILSTON

Appointment of Deputy Town Clerk

APPLICATIONS are invited from Solicitors with local Government experience for the above appointment.

The salary will be in accordance with Grade VII of the A.P. and T. Division of the National Scales (£635 per annum, rising by annual increments of £25 to £710 per annum).

The appointment will be subject to the Local Government Superannuation Act, 1937, and terminable by one month's notice on either side. Canvassing in any form will disqualify.

Applications, endorsed "Deputy Town Clerk," stating age, present position, qualifications and experience, accompanied by copies of three recent testimonials, should reach the undersigned by January 18, 1950.

A. M. WILLIAMS,
Town Clerk.

Town Hall,
Bilston.

Established 1836. Telephone: Holborn 0973

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ASSETS EXCEED £2,000,000

Reversions and Life Interests Purchased
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Apply to the ACTUARY, 59, CAREY STREET, W.C.2.

THE

DOGS' HOME Battersea

INCORPORATING THE TEMPORARY HOME FOR LOST & STARVING DOGS

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LONDON, S.W.8,
AND
FAIRFIELD ROAD, BOW, E.
(Temporarily closed)

OBJECTS:

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2. To restore lost dogs to their rightful owners.
3. To find suitable homes for unclaimed dogs at nominal charges.
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Out-Patients' Department (Dogs and Cats only) at Battersea, Tuesdays and Thursdays - 3 p.m.

Since the foundation of the Home in 1860 over 1,925,000 stray dogs have received food and shelter.

Contributions will be thankfully received by E. L. HEALEY TUTT, *Secretary.*

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The Need is Greater NOW! Bequests are needed by the British Legion Appeal (Haig's Fund) to enable our greatest welfare organization to help all ex-Service men and women of all Services, all Ranks and all Wars, their dependants and the wives and children of those who died.

SOLICITORS

are earnestly requested to acquaint clients making their Wills with this greater need.

BRITISH LEGION APPEAL
(HAIG'S FUND)

Full particulars and Forms of Bequests *can be obtained from*

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(HAIG'S FUND)
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Registered under the War Charities Act, 1940

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